

मुख्य पोस्ट मास्टर जनरल डाक
परिमंडल, के पत्र क्रमांक 22/153,
दिनांक 10-1-06 द्वारा पूर्व भुगतान
योजनान्तर्गत डाक व्यय की पूर्व अदायगी
डाक द्वारा भेजे जाने के लिए अनुमत.

पंजी. क्रमांक भोपाल डिवीजन
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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 157]

भोपाल, शुक्रवार, दिनांक 19 मार्च 2010—फाल्गुन 28, शक 1931

विधि और विधायी कार्य विभाग

भोपाल, दिनांक 19 मार्च 2010

क्र. 1911-104-इक्कीस-अ(प्रा.).—भारत के संविधान के अनुच्छेद 348 के खण्ड (3) के अनुसरण में, मध्यप्रदेश आतंकवादी एवं उच्छेदक गतिविधियां तथा संगठित अपराध नियंत्रण विधेयक 2010 (क्रमांक 3, सन् 2010) का अंग्रेजी अनुवाद राज्यपाल के प्राधिकार से एतद्वारा प्रकाशित किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
राजेश यादव, अपर सचिव.

MADHYA PRADESH BILL
No. 3 of 2010.

THE MADHYA PRADESH AATANKVADI EVAM UCHHEDAK GATIVIDHIYAN TATHA
SANGATHIT APRADH NIYANTRAN VIDHEYAK, 2010.

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MADHYA PRADESH BILL

No. 3 OF 2010.

THE MADHYA PRADESH AATANKVADI EVAM UCHHEDAK GATIVIDHIYAN TATHA SANGATHIT APRADH NIYANTRAN VIDHEYAK, 2010.

A Bill to make special provisions for prevention and control of and for dealing effectively with terrorist and subversive activities and organised crime and for matters connected therewith and incidental thereto.

Be it enacted by the Madhya Pradesh Legislature in the Sixty-first year of the Republic of India as follows:—

Short title, extent,
commencement,
duration and
savings

1. (1) This Act may be called the Madhya Pradesh Aatankvadi Evam Uchhedak Gatividhiyan Tatha Sangathit Apradh Niyantaran Adhiniyam, 2010.

(2) It extends to the whole of the State of Madhya Pradesh.

(3) It shall come into force from the date of its publication in the Official Gazette.

(4) It shall remain in force for a period of three years only from its commencement, but the State Government may, by notification issued from time to time, direct that it shall remain in force for such further period as specified in the notification.

(5) Notwithstanding the expiry of this act under sub-section (4), it shall not affect.—

- (a) the previous operation of or anything duly done or suffered under this Act; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

2. (1) In this Act, unless the context otherwise requires,—

Definitions.

(a) “abet” with its grammatical variations and cognate expressions includes,—

- (i) the communication or association with any person with the actual knowledge or having reason to believe that such person is engaged in assisting in any manner, a terrorist act or an unlawful association engaged in subversive activities or an organised crime syndicate; or
- (ii) the passing on or publication of without any lawful authority, any information likely to assist a person who is engaged in a terrorist act or an unlawful association engaged in subversive activities or an organised crime syndicate and the passing on or publication or distribution of any document or matter obtained from a person who is engaged in a terrorist act or an unlawful association engaged in subversive activities or an organised crime syndicate; or
- (iii) the rendering of any assistance, whether financial or otherwise to any person who is engaged in a terrorist act or an unlawful association engaged in subversive activities or an organised crime syndicate;

(b) “Code” means the Code of Criminal Procedure, 1973 (2 of 1974);

(c) “Competent Authority” means the Competent Authority appointed under Section 16;

(d) “continuing unlawful activity” means an activity prohibited by law for the time being in force, which constitutes a cognizable offence punishable with imprisonment of three years or more,—

- (i) undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheet have been filed before a competent court within the preceding period of ten years and that court has taken cognizance of such offence; or

- (ii) undertaken either singly or jointly, as a member of an “unlawful association” engaged in subversive activities or on behalf of such association which has been declared unlawful under Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) and which is engaged in subversive activities;

(e) “organized crime” means any continuing unlawful activity by a person, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate or either as a member of an or on behalf of such an unlawful association engaged in subversive activities by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or promotes armed rebellion;

- (f) “organised crime syndicate” means a group of two or more persons who, acting either singly or collectively, as a syndicate of gang indulge in activities of organised crime;
- (g) “proceeds of terrorism” means all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, and shall include cash irrespective of person in whose name such proceeds are standing or in whose possession they are found;
- (h) “property” means property and assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title of, or interest in, such property or asset and includes bank account;
- (i) “special court” means the special court constituted under Section 8;
- (j) “subversive activity” means an activity or preparation, conspiracy or abetment of any activity, undertaken either singly or jointly, with intent to promote enmity between different groups on ground of religion, race, place of birth and residence which is prejudicial to maintenance of harmony and threatens the unity, security and peace of the society by means, whatsoever, in such a manner as to cause or likely to cause, death or injuries to any person or persons or loss of, or damaged to, or destruction of property or vital installations or places of worships or historical and archaeological monuments or disruption of any supplies or services essential to the life of the community;
- (k) “terrorist act” means an activity undertaken either singly or jointly with intent to threaten the unity, security and peace of the society or to strike terror in the people or any section of the people or any act or thing by using bombs, dynamite or other explosive substance or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means, whatsoever, in such a manner as to cause or likely to cause, death or injuries to any person or persons or loss of, or damage to or destruction of property or vital installations or places of worships or historical and archeological monuments or disruption of any supplies or services essential to the life of the community or detention or any person with threat to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;
- (l) “unlawful association” means an association or body of individuals,—
- (i) which has for its objects doing of any continuing unlawful activity or which encourages or aids persons to undertake any continuing unlawful activity, or the members of which undertake such activity; or
 - (ii) which has for its objects any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code, 1860 (45 of 1860) or which encourages or aids persons to undertake any such activity, or the members of which undertake any such activity.
- (2) Words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

3. (1) Whoever commits a terrorist or subversive act or organised crime or engages in continuing unlawful activities,—

(i) if such act or continuing unlawful activities has resulted in the death of any person, be punishable with death or imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs;

(ii) in any other case, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to a fine.

(2) Whoever conspires or attempts to commit or advocates, abets or knowingly facilitates the commission of terrorist or subversive act or continuing unlawful activities or an organised crime or any act preparatory to terrorist act or continuing unlawful activities or organised crime, shall be punishable with imprisonment for a term which shall be not less than five years but which may extend to imprisonment for life, and shall also be liable to a fine, subject to a minimum of rupees five lacs.

(3) Whoever knowingly and voluntarily harbours or conceals or attempts to harbour or conceal, any member engaged in subversive activities or organised crime syndicate or any person who has committed a terrorist act or is engaged in assisting in any manner a terrorist act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum fine of rupees five lacs.

(4) Any person who is a member of an unlawful association engaged in subversive activities or an organised crime syndicate shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to a fine, subject to a minimum of rupees five lacs.

(5) Whoever holds proceeds of terrorism or any property derived or obtained from commission of a continuing unlawful activity or an organised crime or which has been acquired through an unlawful association engaged in subversive activities or organised crime syndicate or a terrorist act shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.

4. Where any person, who either in person or as a member of an unlawful association or organised crime syndicate or otherwise has committed or engaged in a terrorist or subversive act, is in unauthorised possession of any bomb, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances of warfare, he shall be guilty of terrorist act notwithstanding anything contained in any other law for the time being in force and shall be punishable with imprisonment for a term which may extend to imprisonment for life and with fine which may extend to rupees ten lacs or with both.

5. If any person on behalf of a member of an unlawful association engaged in subversive activities or an organised crime syndicate or on behalf of a person who has committed or is engaged in a terrorist act at any time, has been in possession of movable or imovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture as provided in Section 24.

Punishment for terrorist or subversive acts, continuing unlawful activities and organised crimes.

Punishment for possession of certain unauthorised arms, explosives etc.

Punishment for possessing unaccounted wealth on behalf of a member of an unlawful association engaged in subversive activities or organised crime syndicate or a person who has committed or is engaged in a terrorist act.

Enhanced penalties.

6. If any person with intent to aid any person who has committed or engaged in a terrorist or subversive act, contravenes any provision of, or any rule made under the explosives Act, 1884 (4 of 1884), the Explosive Substances Act, 1908 (6 of 1908), the Inflammable Substances Act, 1952 (20 of 1952) or the Arms Act, 1959 (54 of 1959), he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to imprisonment for life and shall also be liable to fine.

Obligation to furnish information.

7. (1) Notwithstanding anything contained in any other law, the officer investigating any offence under this Act, with prior approval in writing of an officer not below the rank of Superintendent of Police, may require any officer or authority of the Central Government or State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to the purposes of this Act.

(2) Failure to furnish the information called for under sub-section (1), or deliberately furnishing false information shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, the offence under sub-section (1) shall be tried as a summary case and the procedure prescribed in Chapter XXI of the said Code (except sub-section (2) of section 262) shall be applicable thereto.

Special courts.

8. (1) The State Government may, by notification in the official Gazette, constitute one or more special courts for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

(2) Where any question arises as to the jurisdiction of any special court, it shall be referred to the State Government whose decision shall be final.

(3) A special court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court of Madhya Pradesh, and the State Government may also appoint, with the concurrence of the Chief Justice of the High Court of Madhya Pradesh, additional judges to exercise jurisdiction of a special court.

(4) A person shall not be qualified for appointment as a judge or an additional judge of a special court, unless he immediately before such a appointment, is a sessions judge or an additional sessions judge.

(5) Where any additional judge is or additional judges are appointed in a special court, the judge of the special court may, from time to time, by general or special order in writing, provide for the distribution of the business of the special court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Jurisdiction of special courts.

9. Notwithstanding anything contained in the Code, every offence punishable under this Act shall, be triable only by the special court within whose local jurisdiction it was committed or as the case may be, by the special court constituted for trying such offence under sub-section (1) of Section 8.

Power of special courts with respect to other offences.

10. (1) When trying any offence punishable under this Act, a special court may also try any other offence with which the accused may, under the Code, be charged at the same trial, if the offence is connected with such other offence.

(2) If in the course of any trial of any offence under this Act, it is found that the accused person has committed any other offence under this Act or under any other law, the special court may, try and convict, such person of such other offence and may pass any sentence authorised by this Act or, as the case may be, such other law for the punishment thereof.

11. (1) For every special court, the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor:

Public
Prosecutor.

Provided that the State Government may also appoint for any case or group of cases, a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor, an Additional Public Prosecutor or a Special Public Prosecutor, unless he has been in practice as an advocate for not less than ten years.

(3) Every person appointed as a Public Prosecutor, or Additional Public Prosecutor or Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

12. (1) A special court may take cognizance of any offence, without the accused being committed to it for trial, upon a police report of such facts.

Procedure and
powers of special
courts.

(2) Where an offence triable by a special court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the special court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provision of section 263 to 265 of the Code shall, so far as may be, apply to such trial:

Provided that if during the course of a summary trial under this sub-section, it appears to the special court that the nature of the case is such that it is undesirable to try it in a summary way, the special court shall recall any witnesses who may have been examined earlier and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to in relation to a special court as they apply to in relation to a Magistrate:

Provided further that in case of any conviction in a summary trial under this section, it shall be lawful for a special court to pass a sentence of imprisonment for a term not exceeding two years.

(3) A special court may, with a view to obtain the evidence of any person, supposed to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(4) Subject to other provisions of this Act, a special court shall, for the purpose of trial of any offence, have all the powers of a Court of Sessions and shall try such offence as if it were a Court of Sessions, so far as may be, in accordance with the procedure prescribed in the Code for the trial before a Court of Sessions.

13. The trial of any offence under this Act by a special court shall have precedence over the trial of any other case against the accused in any other court (not being a special court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other cases shall remain in abeyance.

Trial by special
courts to have
precedence.

Power to transfer cases to regular courts.

14. Where after taking cognizance of an offence, a Special court is of the opinion that the offence is not triable by it, it shall return the case to the prosecuting agency for presenting the case before the competent court having jurisdiction to take cognizance of the offence. The time consumed in this process shall be excluded for the purpose of limitation.

Appeal.

15. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a special court to the High Court.

(2) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963), every appeal against judgment, sentence or order passed by the special court be preferred within ninety days from the date of such judgment, sentence or order.

Appointment of Competent Authority.

16. The State Government may appoint an officer, of Home Department not below the rank of Secretary to Government, to be the Competent Authority for the purposes of section 17.

Authorisation of interception of wire, electronic or oral communication.

17. (1) A police officer not below the rank of Superintendent of Police supervising the investigation of a terrorist act, continuing unlawful activity or an organised crime under this Act may submit an application in writing to the Competent Authority for an order authorising or approving the interception of wire, electronic or oral communication by the investigating officer where such interception may provide or has provided evidence of any offence involving a terrorist act, continuing unlawful activity or an organised crime.

(2) Each application shall include the following information, namely :—

- (a) the identity of the investigating or law enforcement officer making the application, and the head of the department authorising the application;
- (b) a statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including-
 - (i) details as to the offence of terrorist act, continuing unlawful activity or organised crime that has been, is being, or is about to be committed;
 - (ii) a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted;
 - (iii) a particular description of the type of communications sought to be intercepted; and
 - (iv) the identity of the person, if known, committing the offence of terrorist act, continuing unlawful activity and organised crime whose communications are to be intercepted;
- (c) a statement as to whether or not other modes of enquiry or intelligence gathering have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous or are likely to expose the identity of those connected with the operation of interception;
- (d) a statement of the period of time for which the interception is required to be maintained, if the nature of the enquiry is such that the authorization of interception should not automatically terminate after the described type of communication has been first obtained, and a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

- (e) a statement of the facts concerning all previous applications, known to the officer authorizing and making the application, made to the Competent Authority for authorization to intercept, or for approval of interceptions of, wire, electronic or oral communications involving any of the same persons, facilities or places specified in the application and the action taken by the Competent Authority on each such application; and
- (f) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such result.

(3) The Competent Authority may require the applicant to furnish additional oral or documentary evidence in support of the application.

(4) Upon such application, the Competent Authority may, after recording the reasons in writing, reject the application, or issue an order, as requested or a modified, authorising or approving interception of wire, electronic or oral communications, if the Competent Authority, on the basis of the facts submitted by the applicant is satisfied that -

- (a) there is a probable cause for belief that an individual is committing, has committed, or is about to commit a particular offence described and made punishable under section 3 and 4 of this Act;
- (b) there is a probable cause for belief that particular communications concerning that offence will be obtained through such interception;
- (c) normal modes of inquiry and intelligence gathering have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or to be too dangerous or is likely to expose the identity of those connected with the operation of interception;
- (d) there is probable cause for belief that the facilities from which, or the place where, the wire, electronic or oral communications are to be intercepted or be used or are about to be used, in connection with the commission of such offence, is leased to, or listed in the name of or commonly used by such person.

(5) Each order by the Competent Authority authorizing or approving the interception of any wire, electronic or oral communication under this section shall specify :—

- (a) the identity of the person, if known, whose communications are to be intercepted;
- (b) the nature, and location of the communication facilities as to which, or the place where, the authority to intercept is granted;
- (c) a particular description of the type of communication sought to be intercepted, and a statement of the particular offence to which it relates;
- (d) the identity of the agency authorized to intercept the communications, and of the person authorizing the application; and
- (e) the period of time during which such interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(6) The Competent Authority shall immediately after passing the order under sub-section (4), but in any case not later than seven day from the passing of the order, submit a copy of the same to the Review Committee constituted under section 19 along with all the relevant papers, record and his own findings etc in respect of the said order, for consideration and approval of the order by the Review Committee.

(7) An order authorizing the interception of a wire, electronic or oral communication under this section shall, upon request of the applicant, direct that a provider of wire or electronic communication service, landlord, custodian or other person shall furnish to the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the unobstructed interception, and with minimum of interference with the services that such service provider, landlord, custodian, or person is providing to the person whose communication are intercepted.

(8) An order issued under this section may authorize or approve the interception of any wire, electronic or oral communication for any period no longer than is necessary to achieve the objective of the authorization, and in any event not longer than sixty days, and such sixty days period shall begin on the day immediately preceding the day on which the investigating or law enforcement officer first begins to conduct an interception under the order or ten days after the order is issued, whichever is earlier, and extension of an order may be granted, but only upon an application for an extension being made in accordance with sub-section (1), and the period of extension shall be no longer than the Competent Authority deems necessary to achieve the purposes for which it was granted and in no event for a period longer than sixty days at a time, and every order and extension thereof shall contain a provision that the authorization to intercept any event shall be executed as soon as practicable and shall be conducted in such a way or manner as to minimize the interception of communications not otherwise subject to interception under this section and shall terminate upon attainment of the authorised objective, or in any event on expiry of the period of the order, and in the event the intercepted communication is in a code of foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after such interception.

(9) Whenever an order authorizing interception is issued pursuant to provisions of this section, the order may require reports to be made to the Competent Authority who issued the order showing that progress has been made towards achievement of the authorized objective and the need for continued interception and such reports shall be made at such intervals as the Competent Authority may require.

(10) Notwithstanding anything contained in any other provision of this section, an officer not below the rank of Inspector General of Police, Criminal Investigation Department or Intelligence who reasonably determines that—

- (a) an emergency situation exists that involves—
 - (i) immediate danger of death or serious physical injury to any person;
 - (ii) conspiratorial activities threatening the security or interest of the State; or
 - (iii) conspiratorial activities characteristic of organized crime that requires a wire, electronic or oral communication to be intercepted before an order from the Competent Authority authorizing such interception can, with due diligence, be obtained; and
- (b) there are grounds upon which an order could be issued under this section to authorize such interception, he may authorize, in writing, the investigating police officer to intercept such wire, electronic or oral communication, if an application for an order, approving the interception is made in accordance with the provisions of sub-sections (1) and (2) within forty-eight hours after the interception has occurred, or begins to occur.

(11) In the absence of an order approving the interception made under sub-section (10), such interception shall immediately terminate when the communication sought is obtained or when the application for the order is rejected, or on completion of 7 days after the interception has occurred or has begun to occur, whichever is earlier, and in the event where an application for permitting interception is rejected under sub-section (4) or an application under sub-section (10) for approval is rejected, or in any other case where the interception is terminated without an order having been issued, the contents of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this section.

(12) (a) The contents of any wire, electronic or oral communication intercepted by any means authorized under this section shall, if possible, be recorded on tape or wire or other comparable device, and recording of the contents of any wire, electronic or oral communication under this sub-section shall be done in such a way as to protect the recording from editing or other alterations and immediately upon the expiration of the period of order, or extension thereof, such recordings shall be made available to the Competent Authority issuing such order and shall be sealed under his directions, and custody of the recording shall be subject to the order of the Competent Authority and it shall not be destroyed except upon an order of the Competent Authority and in any event shall be kept for ten years.

(b) Applications made and orders issued under this section shall be sealed by the Competent Authority, and custody of the applications and orders shall be kept in such manner as the Competent Authority directs, and shall not be destroyed except on an order of the Competent Authority, and in any event shall be kept for ten years.

(13) Notwithstanding anything contained in the Code or in any other law for the time being in force, the evidence collected through the interception of wire, electronic or oral communication under this section shall be admissible as evidence against the accused in the Court during the trial of a case:

Provided that the contents of any wire, electronic or oral communication intercepted pursuant to authorisation under this section or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing or other proceedings in any court unless each accused, not less than ten days before trial, hearing or proceeding, has been furnished with a copy of the order of the Competent Authority, and accompanying application, under which the interception was authorised or approved:

Provided further that the above said ten days period may be waived by the judge, trying the matter, if he finds that it was not possible to furnish the accused with the above information ten days before the trial, hearing or proceeding and that the accused will not be prejudiced by the delay in receiving such information.

Explanation.—For the purposes of this section—

- (a) “interception” means the aural or other acquisition of the contents by wire, electronic or oral communication through the use of any electronic, mechanical or other device;
- (b) “wire communication” means any aural transfer made in whole or part through the use of facilities for the transmission of communication by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of such connection in switching station) and such term includes any electronic storage of such communication;
- (c) “oral communication” means any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation but such term does not include any electronic communication;

- (d) “electronic communication” means any transfer of signs, signals, writings, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system that affects inland or foreign commerce but does not include—
- (i) the radio portion of a cordless telephone communication that is transmitted between the wireless telephone hand-set and the base unit;
 - (ii) any wire or oral communication;
 - (iii) any communication made through a tone only paging device; or
 - (iv) any communication from a tracking device.

Power of
Competent
Authority
regarding
issuance of
directives to the
operators of wire
communication
and electronic
communication.

18. (1) A police officer not below the rank of a Superintendent of Police supervising the investigation of a crime under this Act may submit an application in writing to the Competent Authority for issue of an order directing any operator of wire communication or electronic communication to de-activate any device of wire communication or electronic communication and de-link the calls or information from or to any such device, reasonably suspected of being used for any criminal act or conspiracy, and the Competent Authority may also direct the operators of wire communication or electronic communication operating in its jurisdiction, by a general or special order, to provide the details of wire communication or electronic communication devices including sim cards provided by them to a particular or persons during a particular period and it shall also be mandatory for such operator or wire communication or electronic communication to provide the required information to the above mentioned authority immediately.

(2) Any person violating any directions given under sub-section (1) shall be punishable with imprisonment for a term which may extend to two years and with a fine which may extend to rupees two lacs.

Constitution of
Review
Committee for
review of
authorisation
orders.

19. (1) There shall be a Review Committee to review every order passed by the Competent Authority under section 17 and sub-section (1) of Section 18.

(2) The Review Committee shall consist of the following members, namely :—

- (i) the Chief Secretary to Government . . . Chairman;
- (ii) the Principal Secretary, Home Department . . . Member;
- (iii) the Principal Secretary, Law and . . . Member.

Legislative Affairs Department.

(3) Every order passed by the Competent Authority under section 17 or sub-section (1) of Section 18 shall be considered by the Review Committee within ten days after its receipt, as to whether the order authorising or approving the application under sub-section (4) of Section 17 or an order under sub-section (1) of Section 18 for interception, deactivation, de-linking of any device of wire communication or electronic communication passed by the Competent Authority is necessary, reasonable and justified.

(4) The Review Committee, after examining the entire record and holding such enquiry, if any deemed necessary, may, by order in writing, either approve the order passed by the Competent Authority or may decide not to approve the same. and on a decision by the Review Committee,

not to approve the order of Competent Authority, the interception, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, already commenced shall be forthwith discontinued and the intercepted communication, if any, in the form of tape, wire or other device shall, thereupon, not be admissible as an evidence in any case and shall be directed to be destroyed.

20. Except as otherwise specifically provided in Section 17, any police officer who :—

Interception and disclosure of wire, electronic or oral communications prohibited.

- (a) intentionally intercepts, endeavours to intercept, or procures any other person to intercept or endeavour to intercept any wire, electronic or oral communication;
- (b) intentionally uses, endeavours to use, or procures any other person to use or endeavour to use any electronic, mechanical or other device to intercept any oral communication when-
 - (i) such device is affixed to, or otherwise transmits a signal through a wire, cable, or other like connection used in wire communication; or
 - (ii) such device transmits communications by radio, or interferes with the transmission of such communication;
- (c) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to believe that the information was obtained through the interception of a wire, electronic or oral communication in violation of Section 17 read with sub-section (4) of Section 19;
- (d) intentionally uses, or endeavours to use, the contents of any wire, electronic or oral communication, knowing or expected to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of Section 17 read with sub-section (4) of Section 19; or
- (e) intentionally discloses, or endeavours to disclose, to any other person the contents of any wire, electronic or oral communication, intercepted under an order made under section 17-
 - (i) knowing or having reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation under this Act;
 - (ii) having obtained or received the information in connection with a criminal investigation; and
 - (iii) with intent to improperly obstruct, impede, or interfere with a duly authorised criminal investigation; or
- (f) intentionally continues the interception of wire, electronic or oral communication after decision by the Review Committee under sub-section (4) of Section 19, not to approve order to Competent Authority,

shall for such violation be punishable with imprisonment for a term which may extend to one year and with fine up to rupees fifty thousand.

Special rules of evidence.

21. (1) Notwithstanding anything to the contrary contained in the Code, or the Indian Evidence Act, 1872 (1 of 1872) for the purpose of trial and punishment for offences under this Act or connected offences, the Court may take into consideration as having probative value, the fact that the accused was :—

- (a) on any previous occasion bound under section 107, 108 or 110 of the Code;
- (b) detained under any law relating to preventive detention; or
- (c) on any previous occasion was prosecuted by the special court under this Act.

(2) Where it is proved that any person involved in an organised crime or terrorist act or any person on his behalf is or has at any time been in possession of movable or immovable property which he cannot satisfactorily account for, the special court shall, unless contrary is proved, presume that such property or pecuniary resources have been acquired or derived by his illegal activities.

(3) Where it is proved that the accused has kidnapped or abducted any person, special court shall presume that it was for ransom.

Certain confessions made to Police Officer to be taken into consideration.

22. (1) Notwithstanding anything contained in the Code or in the Indian Evidence Act, 1872 (1 of 1872), but subject to the provisions of this section, a confession made by a person before a police officer not below the rank of the Superintendent of Police and recorded by such police officer either in writing or on any devices like cassettes, tapes, sound tracks or video from which sounds or images can be reproduced, shall be admissible in the trial of such person or co-accused, abettor or conspirator:

Provided that the co-accused, abettor or conspirator is charged and tried in the same case together with the accused.

(2) The confession shall be recorded in a free atmosphere in the same language in which the person is examined and as narrated by him.

(3) The police officer shall, before recording any confession under sub-section (1), explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him and such police officer shall not record any such confession unless upon questioning the person making it, he is satisfied that it is being made voluntarily and the concerned police officer shall, after recording such voluntary confession, certify in writing below the confession about his personal satisfaction of the voluntary character of such confession, putting the date and time of the same.

(4) Every confession recorded under sub-section (1) shall be sent forthwith to the Chief Judicial Magistrate having jurisdiction over the area in which such confession has been recorded and such Magistrate shall forward the recorded confession so received to the Special Court which may take cognizance of the offence.

(5) The person of whom a confession has been recorded under sub-section (1) shall also be produced before the Chief judicial Magistrate to whom the confession is required to be sent under sub-section (4) along with the original statement of confession, written or recorded on mechanical device without unreasonable delay.

(6) The Chief Judicial Magistrate shall scrupulously record the statement, if any, made by the accused so produced and get his signature and in case of any complaint of torture, the person shall be directed to be produced for medical examination before a Medical Officer not lower in rank than an Assistant Civil Surgeon.

23. (1) Notwithstanding anything contained in the Code the proceedings under this Act may, for reasons to be recorded in writing, be held in camera, if the special court so decides. **Protection of witnesses.**

(2) A special court may, on an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of any witness secret.

(3) In particular and without prejudice to the generality of the provisions of sub-section (2), the measure which a special court may take under that sub-section may include—

- (a) the holding of the proceedings at a place to be decided by the special court;
- (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
- (c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed;
- (d) a decision that it is in the public interest to order that all or any of the proceeding pending before such a court shall not be published in any manner.

(4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to five thousand rupees.

24. (1) Where a person has been convicted of any offence punishable under this Act, the special court may, in addition to awarding any punishment, by order in writing, declare that any property, movable or immovable or both as specified in sub-section (2) of section 21, belonging to the accused and specified in the order, shall stand forfeited to the State Government free from all encumbrances. **Forfeiture and attachment of property.**

(2) Where any person is accused of any offence under this Act, it shall be open to the special court trying him, to pass an order that all or any properties, movable or immovable or both belonging to him and as specified in sub-section (2) of section 21, shall during the period of such trial, attached, and where such trial ends in conviction, the properties so attached shall stand forfeited to the State Government free from all encumbrances.

(3)(a) If upon a report in writing made by an investigating police officer with the approval of the supervisory officer referred to in sub-section (1) of section 17 any special court has reason to believe that any person, who has committed an offence punishable under this Act has absconded or is concealing himself so that he may not be apprehended, such court may, notwithstanding anything contained in section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not earlier than fifteen days but not later than thirty days from the publication of such proclamation:

Provided that if the investigating police officer concerned fails to arrest the accused, who has absconded or is concealing himself, within a period of two months from the date of registering the offence against such person, the officer shall, on the expiry of the said period, make a report to the special court for issuing the proclamation.

(b) The special court issuing a proclamation under clause (a) may, at any time, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person and thereupon the provisions of section 83 to 85 of the Code shall apply to such attachment as if such attachment was made under that Code.

(c) If, within six months from the date of attachment, any person, whose property is, or has been, at the disposal of the State Government appears voluntarily or is apprehended and brought before the special court by whose order the property was attached, or the Court to which such court is subordinate, and proves to the satisfaction of such court that he did not abscond or conceal himself for the purpose of avoiding apprehension and that he had not received such notice of the proclamation as to enable him to attend within the specified time therein, such property or, if the same has been sold, the net proceeds of the same and the residue of the property, if any, shall, after satisfying all costs incurred in consequence of the attachment, be delivered to him.

Modified
application of
certain provisions
of the Code.

25. (1) Notwithstanding anything in the Code or in any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and the term "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that in sub-section (2),—

- (a) the reference to "fifteen days" and "sixty days" wherever they occur, shall be construed as references to "thirty days" and "ninety days" respectively;
- (b) after the proviso, the following proviso shall be inserted, namely :—

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the special court may extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days."

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless,—

- (a) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
- (b) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the court that he was on bail in an offence under this Act, or under any other Act, on the date of commission of the offence in question.

(6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force relating to granting of bail.

(7) The police officer seeking the custody of any person for preindictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such custody and also for the delay, if any, in seeking the police custody.

26. (1) In a prosecution for an offence of terrorist act or continuing unlawful activities or organised crime punishable under section 3 and section 4, if it is proved—

Presumption as to offences under Section 3 and Section 4.

- (a) that unlawful arms and other material including documents or papers were recovered from the possession of the accused and there is reason to believe that such unlawful arms and other material including documents or papers were used in the commission of such offence; or
- (b) that by the evidence of an expert, the finger prints of the accused were found at the site of the offence or on anything including unlawful arms and other material including documents or papers and vehicle's used in connection with the commission of such offence.

the special court shall presume, unless the contrary is proved, that the accused had committed such offence.

(2) In a prosecution for an offence punishable under sub-section (2) of section 3, if it is proved that the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing an offence of terrorist act, continuing unlawful activities or organised crime, the special court shall presume, unless the contrary is proved, that such person has committed the offence under the said sub-section (2).

27. (1) Notwithstanding anything contained in the Code,—

Cognizance of and investigation into and offence.

- (a) no information about the commission of an offence of terrorist act or a continuing unlawful activity or organised crime under this Act, shall be recorded by a police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of Police;
- (b) no investigation of an offence under the provisions of this Act shall be carried over by a police officer below the rank of the Deputy Superintendent of Police.

(2) No special court shall take cognizance of any offence under this Act without the previous sanction of a police officer not below the rank of Inspector General of Police.

28. (1) Where a police officer arrests a person, he shall prepare a custody memo of the person arrested.

Arrest.

(2) The person arrested shall be informed of his right to consult a legal practitioner as soon he is brought to the police station.

(3) Whenever any person is arrested, information of his arrest shall be immediately communicated by the police officer to a family member or in his absence to a relative named by the accused person, by telegram, telephone or by any other means and this fact shall be recorded by the police under the signature of the person arrested.

(4) The person arrested shall be permitted to meet the legal practitioner representing him during the course of his interrogation:

Provided that nothing in this sub-section shall entitle the legal practitioner to remain present during interrogation.

- Overriding effect.** 29. The provisions of this Act or any rules made thereunder or any order made under any such rule shall, have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having the force of law.
- Protection of action taken in good faith.** 30. No suit, prosecution or other legal proceeding shall lie against the State Government or any officer or authority of the State Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.
- Power of High Court to make rules.** 31. The High Court may, by notification in the official Gazette, make such rules as it may deem necessary for carrying out the provisions of this Act relating to the special courts.
- Power of State Government to make rules.** 32. Without prejudice to the powers of the High Court to make rules under section. 31, the State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.
- Rules to be laid on table of Legislative Assembly.** 33. Every rule made under this Act shall be laid, as soon as may be after it is made, on the table of Legislative Assembly.
- Power to remove difficulties.** 34. (1) If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:
- Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

STATEMENT OF OBJECTS AND REASONS

Terrorism today has assumed international dimensions wherein terrorist organisations are operating through their modules, sleepers, agents and sympathiser organisations across the country and across nations. Spread of terrorism is seriously threatening the unity, peace and the secular fabric of our society. Organised crime too has now come up as a very serious menace, it knows no national boundaries and is fuelled by illegal wealth generated by contract killings, extortions, robberies, smuggling in contrabands, illegal trade in narcotics, arms and explosives, kidnappings for ransom, collection of protection money and money laundering etc. The illegal wealth and black money generated by the organised crime being very huge, it has deleterious effect on our economy. It is also seen that the organised crime syndicates have made a common cause with terrorist outfits and promote narco-terrorism and illicit trade of arms which extend beyond the national boundaries. There are convincing reasons to believe that subversive elements and organised criminals have become a serious threat to the society and there is an urgent need to effectively curb their activities.

2. It is also noticed that terrorist outfits, unlawful organisations and organized crime syndicates have been making extensive use of wire, electronic and oral communications in their disruptive and criminal activities. The interception of such communications to obtain evidence of the commission of crimes or to prevent their commission would be an indispensable aid to law enforcement and administration of justice.

3. The State Government has, therefore, decided to enact a special law with stringent and deterrent provision for strengthening the existing legal frame work i.e. the penal and procedural laws and the adjudicatory system to curb and control the menace of terrorism, subversive and organised criminal activities.

4. Hence this Bill.

Bhopal:

Dated the 24th February 2010.

UMASHANKAR GUPTA

Member-in-Charge.